IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

FAO.No. 56 of 2007()

AGAINST THE ORDER DATED 16/11/2006 IN IA.1529/06 IN AS.99/2006 of SUB COURT,ATTINGAL

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APPELLANT/COUNTER PETITIONER/RESPONDENT

MADHURI,
W/O.SARASAN, AGED 40 YEARS, UDAYAM,
MUDAYIL DESOM, VARKALA VILLAGE.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS: PETITIONER/APPELLANT

SATHYASEELAN NADAR,
S/O PONNAYYAN NADAR, AGED 48 YEARS,
PUTHERN VILLA VEEDU, MUDAYIL DESOM,
VARKALA P.O.

BY //

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO. 582/07 IN FAO 56/07

DISMISSED

14/2/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

F.A.O .NO. 56 OF 2007

Dated 14th February 2007

J U D G M E N T

Defendant in O.S.100/05 on the file of Munsiff court, Varkala who is the respondent in A.S.99/06 on the file of Sub court, Attingal is the appellant. Respondent is the plaintiff before the trial court and appellant before first appellate court. Suit was filed seeking a decree for declaration of right of way and permanent prohibitory injunction. Learned Munsiff after elaborate trial dismissed the suit holding that respondent did not establish the right of way claimed in the suit. Challenging dismissal of the suit respondent filed A.S.99/06. In the appeal respondent filed I.A.1529/06, an application for an order of injunction restraining appellant from causing any obstruction to plaint C schedule way. Learned Sub Judge as per impugned order dated 16/11/2006 granted an order of temporary injunction which is challenged in this appeal.

2. Learned counsel appearing for appellant was heard. Argument of learned counsel appearing for appellant was that when trial court after an elaborate trial found that respondent has no right of way and there exist another path way to the house of respondent, an order of injunction should not have been granted and therefore the impugned order is to be set aside.

3. There is force in the submission of learned counsel appearing for appellant that when after trial, on the evidence learned Munsiff found that respondent has got another way and respondent did not establish a right of way through plaint C schedule property an order of temporary injunction should not ordinarily be granted without entering a finding that the finding of learned Munsiff is incorrect. But considering the fact that the appeal has already been admitted, it is in the interest of justice, to direct expeditious disposal of the appeal. Learned Sub Judge is directed to dispose of the appeal within 30 days from the date of receipt of a copy of this judgment.

Appeal is disposed of accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.